IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 770 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

R.U. SHAH

Versus

KARAMSHABHAI LALLUBHAI RABARI

Appearance:

1. Criminal Appeal No. 770 of 1994

MR PARESH ADHYARYU for MR KI SHAH for Petitioner No. 1

MR HRIDAY BUCH for MR ND NANAVATI for Respondent No. 1

MR IM PANDYA A.P.P. for Respondent No. 2

CORAM : MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 30/01/2003

ORAL JUDGEMENT

1. The Food Inspector of the Surat Municipal Corporation has preferred this appeal challenging the

judgment and order of the acquittal passed in favour of respondent no.1 for the charges punishable under Sections 7 and 16 of the Prevention of Food Adulteration Act (hereinafter referred to as "the Act"). The judgment and order of acquittal is passed by the learned Judicial Magistrate, First Class (Municipal) Surat dated 23rd July, 1992.

2. The case of the prosecution in nut shell can be stated as under :-

2.1. The appellant who at the relevant time was discharging duty as Food Inspector in Surat Municipal Corporation was on his usual round and in the morning at about 6:25 hours on 8th February, 1990 he and his peon were near a Gujarati School in Variyavi market area. At that time, he located one person on his cycle carrying aluminium cans containing milk. He was halted by the Food Inspector and he thereafter asked his peon to summon one witness to remain present at the time of collecting the sample. The peon came there with one witness namely Dineshchandra Bhagvandas Panirwala resident of Saiyedpura and in his presence the name of respondent no.1 was asked by the appellant and respondent no.1 told him his name to be Karamsinhbhai Lallubhai Rabari resident of Ved Road, Surat. On further inquiry, he also informed the appellant that the cans contained buffalo milk and he was selling the same to his customers. The appellant expressed his desire to collect the samples for the purpose of getting them analysed and he gave written intimation to respondent no.1 regarding his intention to purchase the milk. The appellant thereafter opened the container having 18 liters of buffalo milk. Thereafter, he took one plunger and cleaned it with a piece of cloth and with the aid of that plunger he stirred the milk in such a way so as to make it homogeneous. He thereafter, took out the milk with the aid of the measure that was being carried by respondent no.1. Before dipping the measure in the milk the appellant cleaned it with a piece of cloth. The milk which was taken out from the container was thereafter filled in three empty bottles which according to the appellant were cleaned on the previous day by washing soda and water by his peon in his own presence. The milk collected by the appellant was in Decca liter. It was equally divided into three parts and the three bottles were thereafter filled in. The appellant thereafter, sealed and packed the bottles in accordance with the Rules contained in the Prevention of Food Adulteration Rule, 1955 in Chapter V and he thereafter, sent one sample to the Public Analyst and two samples to the Local Health Authority. The procedure of

collecting the samples were duly recorded in the panchnama which are at Exh.18 on record of the case. The appellant thereafter, sent the copy of the seal impression separately through peon Shri Manilal Ganesh to the Public Analyst. The samples as well as seal impression were duly received by the office of the Public Analyst and in response to that Smt. J.K. Kandoi had acknowledged the receipt of the sample and the specimen of seal impression. On samples being analysed it was found that the content of fat were 3.3% whereas the minimum limit prescribed under the Act is 6.0%. Similarly, solid non fat were found to be 6.6% whereas the minimum limit is of 9.0%. Thus, in the opinion of the Public Analyst the sample did not conform to the standard laid down in the Act as well as to the Public Analyst report, and he accordingly despatched the report to the appellant. After receiving the report and having found that the samples were adulterated one, he forwarded all the relevant papers alongwith the report of the Public Analyst to the Local Health Authority for obtaining his consent. The Local Health Authority after perusing the material placed before it, thought it fit to accord his consent to the appellant in lodging the prosecution case against respondent no.1. Accordingly, a complaint came to be filed against respondent no.1 for the alleged commission of the aforesaid offence in the Court of learned Judicial Magistrate, First Class (Municipal), Surat.

2.2. After lodging the complaint, the appellant forwarded a copy of the report to respondent no.1 with an intimation that if he desired to get the remaining samples analysed by the Director of the Central Food Laboratory, he should make necessary application to the learned Magistrate. From the record however, it appears that no such application was made, hence, report of the Public Analyst was relied on by both the sides at the time of the Trial.

3. At the Trial the prosecution examined the Food Inspector i.e. the appellant - Shri Ranjitlal Umedchand Shah as prosecution witness no.1 at Exh.7. He has stated in his affidavit that on 8th February, 1990 in the morning at about 6:15 while he was on his usual round, he notice respondent no.1 going on his cycle carrying the cans with him. On making inquiry it was revealed that he was selling buffalo milk. A panch was kept present and in his presence sample was collected for the purpose of analysis after giving due intimation to that effect to respondent no.1 in writing by the appellant. He has further deposed the manner in which the sample was

collected and it was packed, sealed etc. He has also deposed that after collecting the sample and packing them in accordance with the relevant rules he sent one sample to the Public Analyst and thereafter, sent specimen of the seal impression separately. He submitted relevant material to the Local Health Authority to obtain the consent for lodging the prosecution, which was duly received by him. After receiving the consent he lodged the prosecution against respondent no.1 in the Court of learned Judicial Magistrate, First Class, Surat and also intimated to respondent no.1 about lodging of the prosecution and he also forwarded a copy of the report with written statement to that effect that if respondent no.1 so desires he should make an application to the learned Magistrate for getting the sample analysed by the Director of the Central Food Laboratory.

3.1. In the cross-examination he has been specifically questioned to the effect that except for his experience he had no other source to find out that the sample of the milk collected by him was of buffalo milk. The appellant has further stated that in the cross-examination in his evidence that it was respondent no.1 who told him that it was buffalo's milk. However, in the cross-examination, by the defence, this part of his evidence is strongly challenged and even suggestion is put to him to the effect that the milk which was sold by respondent no.1 was not buffalo milk but it was cow milk. The appellant has also admitted in his cross-examination that he has solely relied on his experience to decide that it was buffalo milk and no other test has been carried out to ascertain whether the milk in question was cow milk or buffalo milk. The defence has also cross-examined him on the aspect of cleaning of the measure and the plunger used by the appellant while collecting the milk sample from the container. The answer is that he had cleaned them with a piece of cloth and nothing more was done. This cross-examination is made by the defence with an attempt to say that cleanliness required by the appellant while collecting the milk in the utensils used for the sample is not maintained.

3.2. The prosecution has also examined Dineshchandra Bhagvandas Panirwala P.W. 2 at Exh.32 who acted as panch at the time when the sample was collected by the appellant from respondent no.1. He has stated in his evidence that he has supported prosecution and stated in his evidence that on the relevant date he was summoned as panch and in his presence the sample of milk was collected by the appellant. He has more or less repeated the same story which has been narrated by the appellant

in his evidence. In the cross-examination an attempt has been made by the defence that he was summoned by the appellant and he was purposely asked to act as panch so as to support the case of the prosecution.

3.3. Apart from the oral evidence the prosecution has placed reliance on the documentary evidence such as complaint, report of the Public Analyst; panchanama; written intimation given to respondent no.1 by the appellant; receipt for purchase of milk by the appellant from respondent no.1 etc. On completion of the recording of the evidence respondent no.1 was confronted with all the circumstances appearing against him in evidence while recording his statement under Section 313 of the Code of Criminal Procedure. In his statement also respondent no.1 has stated that what he sold was not buffalo milk but it was cow milk. No other specific defence has been pleaded.

4. At the end of the trial the learned Magistrate, came to the conclusion that the prosecution was not able to establish the case against respondent no.1 beyond reasonable doubt and hence, and he is acquitted of all the charges levelled against him. At the time of hearing of this appeal, Mr.K.I. Shah learned advocate for the appellant has submitted that the order of the acquittal passed by the learned Magistrate is erroneous inasmuch as the prosecution has been able to prove the case against the respondent no.1 beyond any reasonable doubt. He has submitted that the report of the Public Analyst clearly show that the milk sold by respondent no.1 was below standard and not conforming to the minimum limits prescribed under the Act and the Rules. So far the contents of fat and solid non fat are concerned he has drawn my attention to Exh.23 - report of the Public Analyst which clearly shows that the contents of fat are to the extent of 3.3% whereas the minimum limit prescribed under the Act is 6.0%. Similarly, with regard to solid non fat the contents found are 6.6.% whereas the minimum limit prescribed under the Act and the Rule is 9.0%. Thus, according to him, it is very clear that the milk was adulterated and, therefore, respondent no.1 was required to be convicted for the offences which is charged against him. As against that Mr.Hriday Buch learned advocate for respondent no.1 has submitted that the order of acquittal passed by the learned Magistrate is proper. He has submitted that respondent no.1 was charged of committing offence for selling adulterated buffalo milk whereas the evidence on record does not indicate in any manner that the sample which was collected by the appellant on the relevant date was that

of buffalo milk. He has also submitted that there is no reliable evidence on record to show that the plunger and the measure with which the milk was churned were cleaned. He has also submitted that though appellant in his evidence stated that the bottles in which the sample was collected were cleaned by his peon but the peon is not examined and, therefore, there is no relevant evidence on record to show that the said bottles were cleaned. Lastly, he has submitted that this appeal does not have any merit and it is required to be dismissed.

5. With a view to reappreciate, I have carefully gone through the record of this case and also considered the rival side contentions. It appears that on 8th February, 1990 the appellant collected the sample of the milk from respondent no.1 in the morning at about 6:25 and after complying with all the formalities required under the Act as well Rules forwarded the sample to the Public Analyst for analysis and on analysis being done, the sample was found to be substandard and adulterated. However, prosecution has been lodged on the ground that respondent no.1 sold buffalo milk which was adulterated one. The question therefore, required to be decided is whether the concerned milk was buffalo milk or something else. In the evidence the appellant has stated that while inquiring with respondent no.1 he informed the appellant that he was selling buffalo milk. This version has been vehemently challenged by the defence in the cross-examination. The appellant has been extensively cross-examined by the counsel for the defence on this aspect and even suggestion was made to effect that it was cow milk and not buffalo milk. The same is ofcourse denied by the appellant. However, the appellant has admitted that except for his own experience he had no other means to find out that it was buffalo milk. So far evidence with regard to the experience of the appellant is concerned there is nothing on record to show that he had adequate experience to decide whether it was buffalo milk or cow milk by simply looking at it. So far respondent no.1 is concerned not only in the cross-examination he has challenged prosecution version, but he has denied in the statement under Section 313 of the Code of Criminal Procedure, also he has denied that it was a buffalo milk. He has also stated in it that what he sold was cow milk and not buffalo milk. In absence of any reliable evidence to the effect that the concerned milk was buffalo milk, the learned Magistrate, has come to the conclusion that the prosecution had failed to establish its case against respondent no.1. On overall consideration of the circumstances appearing on record and the facts and circumstances of the case, I am

of the opinion, that the grounds on which the order of acquittal is passed are not unsound and not unreasonable. I do not see any special ground for upsetting the judgment of the learned Magistrate. On this ground alone, the appeal is required to be dismissed. Without entering into other questions which have been raised by respondent no.1, this appeal is dismissed.

[AKSHAY H. MEHTA, J.]

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